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6/20/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of) Examiner: Shin-Lin Chen
Gary Kruh et al.) Art Unit: 1632
Serial No. 09/647,140)
Filed: September 27, 2000)
For: "MRP-Related ABC)
Transporter Encoding)
Nucleic Acids and Methods)
of Use Thereof")

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AMENDMENT AND REQUEST FOR RECONSIDERATION

UNDER 37 C.F.R. §1.111

Introductory Comments

The February 13, 2003 Official Action has been carefully reviewed. In view of the amendments submitted herewith and the following remarks, favorable reconsideration and allowance of this application are respectfully requested.

As a preliminary matter, Applicants note that the Examiner has made the restriction requirement final asserting that the fact that no lack of unity was found during the International phase of this application is irrelevant.

Applicants respectfully submit that this statement flies in the face of MPEP §1893.03(d). The Examiner is asked to provide Applicants with the authority relied upon indicating that this standard has been modified and is no longer applicable to §371 applications. Absent such a showing, Applicants maintain that the present restriction is improper and should be withdrawn. Applicants reserve the right to file one or more continuing applications under 35 U.S.C. §120 on any subject matter ultimately withheld from consideration.

As an additional preliminary matter, Applicants are pleased to note that the Examiner has indicated that claims 1-3 and 5 are in condition for allowance.

At page 3 of the Official Action, the Examiner has indicated that in order to claim priority to a previously

filed application, a specific reference must be made in the instant application. Inasmuch as the present application was filed prior to November 29, 200, no petition should be required to insert a proper priority claim into the application. Accordingly, the specification has been amended to include such a claim.

The Examiner has also indicated that the abstract must be provided on a separate sheet and sequence identifiers must be inserted into the application where appropriate. These minor informalities corrected in accordance with the present amendment.

At page 5 of the Official Action, the Examiner has objected to claims 49-51, 57, and 58 for referencing "a host cell" or "a method" instead of "the host cell" or "the method" of claims 48 and 56, respectively. Additionally, the Examiner objects to claims 45-51 and 56-58 for including the non-elected inventions of SEQ ID NOS: 3, 5, and 7. The claims have been amended in accordance with the Examiner's helpful suggestions thereby rendering these grounds of rejection moot.

The Examiner has also objected to claim 7 under 37 CFR §1.75(c) as allegedly failing to further limit the subject matter of the claim from which it depends.

At page 6 of the Official Action, the Examiner has rejected claims 4 and 6 under 35 U.S.C. §112, second paragraph as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention.

The Examiner has also rejected claim 6 under 35 U.S.C. §112, first paragraph as allegedly containing subject matter which was not described in the specification in such a way as to reasonably convey to a skilled artisan that the inventors, at the time the application was filed, had possession of the claimed invention. The Examiner has further rejected claim 6 under 35 U.S.C. §112, first paragraph asserting that the specification allegedly fails to provide

enablement for allelic variants of SEQ ID NO: 1.

At page 12 of the Official Action, the Examiner has rejected claims 56-58 under 35 U.S.C. §112, first paragraph as allegedly containing subject matter which was not described in the specification in such a way as to enable a skilled artisan to make and/or use the invention.

The foregoing constitutes the entirety of the rejections and objections raised in the February 13, 2003 Official Action. In light of the present claim amendments and the following remarks, each of the above-mentioned objections and rejections is respectfully traversed. No other issues are pending in the present application.